

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PATRICIA A. LATHAM,
Plaintiff,

VS.

THE MINNESOTA LIFE INSURANCE
COMPANY,
Defendant.

)
)
)
) Case No.: 05-CV-10294-RWZ
)
)
)
)

MOTION TO CONTINUE DISCOVERY DEADLINE
AND PRE-TRIAL CONFERENCE

Minnesota Life Insurance Company (“Minnesota Life”) by and through its attorneys, Cozen O’Connor, hereby moves this Court to extend the written discovery deadlines and pre-trial conference by 60 days, and in support thereof, states as follows, that:

1. Plaintiff filed this action on March 18, 2005 in the District Court Department of the Trial Court for the Commonwealth of Massachusetts, Lowell Division, which Minnesota Life removed to this Court.

2. Plaintiff's action seeks recovery of benefits under a life insurance policy issued by Minnesota Life to Stephen W. Latham. In addition to her claim for breach of contract, Plaintiff claims that Minnesota Life engaged in unfair settlement practices thereby violating Massachusetts consumer protection laws.

3. In response, Minnesota Life maintains that Mr. Latham made material misrepresentation in his application for insurance, thereby withholding pertinent medical information, the disclosure of which would have resulted in Minnesota Life's decision not to issue the subject policy.

4. The parties submitted a Joint Statement Pursuant to Local Rule 16.1, and the Court held a scheduling conference on April 19, 2005. After hearing the parties respective positions at the scheduling conference, the Court deferred entry of a scheduling order. Rather, it set a fact discovery cut-off of July 15, 2005 and scheduled a pre-trial conference for August 3, 2005. The Court noted that the pre-trial conference would be used to hear the status of the case and to set expert discovery and dispositive motion deadlines if necessary. The Court later extended the fact discover cut-off by 60 days and continued the pre-trial conference to September 21, 2005.

5. As part of its written discovery, Minnesota Life subpoenaed medical records from physicians who treated Mr. Latham but were not identified in his application for life insurance as required. Before these medical providers would release the records, they required authorized releases from Plaintiff. Minnesota Life forwarded the releases to Plaintiff's counsel on August 11, 2005 requesting that his client execute the same. See Exhibit A. In response, Plaintiff's counsel advised that he would not comply with this discovery request. See Exhibit B.

6. In an effort to work out the discovery dispute without the Court's intervention, Minnesota Life's counsel called Plaintiff's counsel and explained that the releases were being sought in the course of fact discovery so that it could obtain the relevant medical records and then proceed with depositions of the treating physicians. Notwithstanding his objection, Plaintiff's counsel agreed to obtain his client's authorization for release of the medical records. However, Minnesota Life did not receive the executed authorizations until September 7, 2005.

7. Immediately upon receipt of the executed releases, Minnesota Life forwarded them to the subpoenaed physicians and requested production of the documents immediately. While the subpoenaed physicians understand the necessity of producing the records in a timely fashion, they were not able to do so by the fact discovery cut-off. In addition, without the relevant medical records, Minnesota Life cannot depose the necessary physicians.

8. Pending receipt and review of the outstanding subpoenaed medical records, as well as the information gleaned from other medical records provided during the claim investigation, Minnesota Life needs to take at least four deposition of physicians that treated Mr. Latham prior to the time he applied for insurance from Minnesota Life.

9. Minnesota Life continues to work with the subpoenaed physicians to obtain the relevant medical records and schedule their depositions as soon as possible. However, given Plaintiff's delay in providing the executed releases, and despite Minnesota Life's good faith effort to comply with the discovery cut-off, it has not had the opportunity to review pertinent medical information or take any key depositions.

WHEREFORE, Minnesota Life respectfully request this Court to extend the current fact discovery cut-off by 60 days and continue the pre-trial conference to a date following the extended fact discovery cut-off.

s/Leena Soni
Catherine A.T. Nelson (6192953)
Leena Soni (6210129)
Attorneys for Defendant, Minnesota
Life Insurance Company
COZEN O'CONNOR

222 S. Riverside Plaza
Suite 1500
Chicago, IL 60606
Tel. (312) 382-3100
Fax. (312) 382-8910

John D. Shea
BBO 600652
1900 Market Street
Philadelphia, PA 19103
Phone: (215) 665-2000
Fax: (215) 665-2013
E-Mail: JShea@Cozen.com

Catherine A.T. Nelson, Esq.
Leena Soni, Esq.
Of Counsel
Cozen O'Connor
222 South Riverside Plaza
Suite 1500
Chicago, IL 60606
(312) 382-3100
cnelson@cozen.com
lsoni@cozen.com

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing Motion to Continue Discovery Deadline and Pre-Trial Conference was served via electronic mail and facsimile on this 13th day of September, 2005 on the following counsel of record:

Marc R. Deshaies
BBO#550198
388 County Street
New Bedford, MA 02740
(508)996-8921

s/Leena Soni
Catherine A.T. Nelson (6192953)
Leena Soni (6210129)
Attorneys for Defendant, Minnesota
Life Insurance Company
COZEN O'CONNOR
222 S. Riverside Plaza
Suite 1500
Chicago, IL 60606
Tel. (312) 382-3100
Fax. (312) 382-8910

Chicago1\345271\2 159988.000

PHILADELPHIA
ATLANTA
CHARLOTTE
CHERRY HILL
CHICAGO
DALLAS
DENVER
LAS VEGAS
LONDON
LOS ANGELES



FILE COPY

NEW YORK
NEWARK
SAN DIEGO
SAN FRANCISCO
SEATTLE
TRENTON
WASHINGTON, DC
WEST CONSHOHOCKEN
WICHITA
WILMINGTON

A PROFESSIONAL CORPORATION

SUITE 1500 222 SOUTH RIVERSIDE PLAZA CHICAGO, IL 60606-6000
312.382.3100 877.992.6036 312.382.8910 FAX www.cozen.com

August 11, 2005

VIA FEDERAL EXPRESS

Lcena Soni
Direct Phone 312.382.3172
Direct Fax 312.382.8910
lsoni@cozen.com

Marc R. Deshaies
388 County Street
New Bedford, MA 02740

Re: *Patricia A. Latham v. The Minnesota Life Insurance Company*
Case No. 05-cv-10294-RWZ
Our File No. 159988

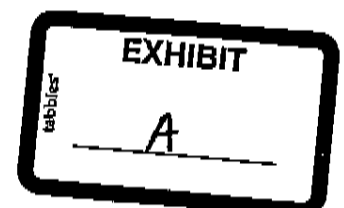
Dear Mr. Deshaies:

Please be advised that we have received an electronic notice that Minnesota Life's Motion to Continue was granted and that the pretrial conference has been rescheduled to September 21, 2005 at 2:00 p.m. We have enclosed a copy of the notice for your file.

As part of written discovery, we have served record subpoenas upon Mr. Latham's treating physicians. Before these records will be produced, we must provide executed medical authorizations from your client. Accordingly, please have Mrs. Latham execute the enclosed medical authorization forms. In addition, Hawthorne Medical requires proof that your client is the administrator of Mr. Latham's estate. Please provide the same in the form of a court appointment order or other suitable document.

At your earliest convenience, please forward all the enclosed medical authorization forms with your client's original signature on each, as well as proof of her appointment as administrator. We have enclosed a self-addressed, pre-paid Federal Express envelope for your convenience in returning the original, executed authorizations.

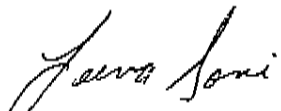
If you have any questions or concerns regarding these issues, please do not hesitate to contact me.



Marc R. Deshaies
August 11, 2005
Page 2

Very truly yours,

COZEN O'CONNOR


By: Leena Soni

LS/nna
Enclosures

CHICAGO\346904\1 159988.000

Soni, Leena

From: ECFnotice@mad.uscourts.gov
Sent: Tuesday, August 02, 2005 10:46 AM
To: CourtCopy@mad.uscourts.gov
Subject: Activity in Case 1:05-cv-10294-RWZ Latham v. Minnesota Life Insurance Company "Order on Motion to Continue"

*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Urso, Lisa entered on 8/2/2005 at 11:46 AM EDT and filed on 8/2/2005

Case Name: Latham v. Minnesota Life Insurance Company
Case Number: 1:05-cv-10294
Filer:
Document Number:

Docket Text:

Judge Rya W. Zobel : endorsedORDER entered granting [8] Motion to Continue. Pretrial conference is rescheduled to 9/21/05 at 2:00 p.m. (Urso, Lisa)

The following document(s) are associated with this transaction:

1:05-cv-10294 Notice will be electronically mailed to:

Catherine A.T. Nelson cnelson@cozen.com

Leena Soni lsoni@cozen.com

1:05-cv-10294 Notice will not be electronically mailed to:

Marc R. Deshaies
388 County Street
New Bedford, MA 02740

John D. Shea
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103

8/3/2005

PARTNERS™

**AUTHORIZATION FOR RELEASE OF PROTECTED
OR PRIVILEGED HEALTH INFORMATION**

☒ RELEASE COPIES OF HEALTH/MEDICAL RECORD
☐ REVIEW HEALTH/MEDICAL RECORD

Patricia A. Latham, as administrator of the	
PATIENT NAME: <u>Estate of Stephen W. Latham</u>	PATIENT DATE OF BIRTH: <u>8/14/50</u>
PATIENT MEDICAL RECORD # _____ (IF ADDRESSOGRAPH STAMP IS NOT USED)	
c/o Marc R. Deshaies	
PATIENT ADDRESS: STREET: <u>Perry, Hicks, Crotty & Deshaies, LLP</u>	APT. #: _____
388 Country Street	
CITY: <u>New Bedford</u>	STATE: <u>MA</u> ZIP CODE: <u>02740</u>
TELEPHONE CONTACT #: DAY: (<u>508</u>) <u>996-8291</u> EVENING: () _____	
c/o Marc R. Deshaies	

Patricia A. Latham, as administrator of the
1. Estate of Stephen W. Latham hereby authorize Partners to release
(Patient Name) (Facility)
my protected health information including copies of my medical record of care received at Brigham and Women's
to the following persons at the locations/facilities listed below, for the purposes described: Hospital

Person(s)/Facility/Address (include name and address)	Purpose (check the appropriate box)
1. <u>Leena Soni / Cozen O'Connor</u>	<input type="checkbox"/> Medical Care
<u>222 S. Riverside Plaza</u>	<input type="checkbox"/> Insurance*
<u>Suite 1500</u>	<input checked="" type="checkbox"/> Legal Matter*
<u>Chicago, IL 60606-6000</u>	<input type="checkbox"/> Personal*
	<input type="checkbox"/> School
	<input type="checkbox"/> Other (please specify)* _____

- * Please refer to the Partners HealthCare Privacy Notice for information on copying fees that may be associated with this request. ** There may be additional charges for copies of photographs.

INFORMATION TO BE RELEASED (Please check all that apply and specify dates):

<input checked="" type="checkbox"/> Clinic visit notes _____	<input checked="" type="checkbox"/> Photographs** _____
<input checked="" type="checkbox"/> Discharge Summary _____	<input checked="" type="checkbox"/> Radiation reports _____
<input checked="" type="checkbox"/> Lab Reports _____	<input checked="" type="checkbox"/> X-rays/Scan reports _____
<input checked="" type="checkbox"/> Operative Reports _____	<input checked="" type="checkbox"/> Other (please specify) <u>all records</u>
<input checked="" type="checkbox"/> Pathology Reports _____	
<input checked="" type="checkbox"/> Medical Record Abstract (e.g. History & Physical, Operative Report, Consults, Test Reports, Discharge Summary)	

See Page 2 on Reverse

**AUTHORIZATION FOR RELEASE OF SPECIFICALLY
PROTECTED OR PRIVILEGED INFORMATION**

I request the release of the specific categories of information that I have **INITIALED** below:

☐ HIV test results (PATIENT AUTHORIZATION REQUIRED FOR EACH RELEASE REQUEST.)
SPECIFY DATES _____

☐ Genetic test results (excludes therapeutic genetic tests)
(SPECIFY TYPE OF TEST) _____

Patricia Latham ☐ Alcohol and Drug Abuse Records Protected by Federal Confidentiality Rules 42 CFR Part 2
(FEDERAL RULES PROHIBIT ANY FURTHER DISCLOSURE OF THIS INFORMATION UNLESS FURTHER
DISCLOSURE IS EXPRESSLY PERMITTED OR WRITTEN CONSENT OF THE PERSON TO WHOM IT PERTAINS
OR AS OTHERWISE PERMITTED BY 42 CFR PART 2.)

☐ Other(s): Please List _____

Confidential Details of:

☐ Psychotherapy (from a Psychiatrist, Psychologist, or Mental Health Clinical Nurse Specialist)

☐ Social Work Counseling/Therapy

☐ Domestic Violence Victims' Counseling

☐ Sexual Assault Counseling

I understand that:

- I may withdraw my authorization at any time by submitting a written request to the Director of Health Information Management, or the Office Manager in my Doctor's Office. Authorization may be withdrawn except for the following:
 - to the extent that action has been taken in reliance on this authorization.
 - if the authorization is obtained as a condition of obtaining insurance coverage, other laws provide the insurer with the right to contest a claim under the policy
- I may refuse to sign this authorization. If I refuse to sign this authorization, my treatment, payment, health plan enrollment, or eligibility for benefits will not be affected
- Information released on this authorization, if redisclosed by the recipient, is no longer protected by Partners HealthCare.
- I understand that this authorization will automatically expire in 6 months unless otherwise specified:

I have carefully read and understand the above, have had any questions explained to my satisfaction, and do herein expressly and voluntarily authorize disclosure of the above information about, or medical records of, my condition to those persons or agencies listed above.

Patient's Signature: _____ Date: _____

Print Name: _____

When patient is a minor, or is not competent to give consent, the signature of a parent, guardian, or other legal representative is required.

Signature of Legal Representative: _____ Date: _____

Print Name: _____ Relationship of representative to patient: _____

For Internal Use Only

Information Released/Reviewed By: _____ Date: _____

Clinic/Office: _____

Hawthorn Medical**AUTHORIZATION FOR RELEASE OF INFORMATION**

Patricia A. Latham, as administrator of the
 Estate of Stephen W. Latham Date of Birth 8/14/50

Last name First name Initial Medical Record #
 c/o Marc R. Deshaies, Perry, Hicks, Crotty & Deshaies, LLP
 Address 388 Country Street, New Bedford, MA 02740

Street Apt.# City State Zip Code

I, the undersigned, hereby authorize Hawthorn Medical on behalf of Dr. Scott
 Henderson
 (Health Services Provider)

to provide from my medical record the information specified below to:

Leena Soni / Cozen O'Connor
 222 S. Riverside Plaza, Suite 1500
 Chicago, IL 60606-6000

For the purpose of

☒ Entire Record ☐ X-Ray Reports ☐ Laboratory Reports ☐ Office Notes

Other: Including dates of treatment from to

By initialing below, I also authorize the release of information in my health record relating to:

Diagnosis or treatment for alcohol and/or drug use.
 Sexually transmitted disease and/or rape/sexual abuse
 Acquired immunodeficiency syndrome (AIDS) and/or human immunodeficiency virus (HIV)
 Behavioral or mental health services Patient or Representative Initial Here:

I understand that my records are protected under the Federal Confidentiality Regulations and under the General Laws of Massachusetts and cannot be disclosed without my written consent, except as otherwise specifically provided by law.

I understand that I have a right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing to the health services provider. I understand that the revocation will not apply to information that has already been released in response to this authorization.

Unless otherwise revoked, this authorization will expire in one (1) year.

I understand that I am responsible for payment of standard fees for copies of medical records (or portions thereof) and will submit my payment along with submission of this medical record authorization form.

I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I understand that any disclosure of information carries with it the potential for an unauthorized redisclosure and the information may not be protected by federal confidentiality rules. I understand that I may inspect or copy the information to be used or disclosed.

☒ Signature of Patient or Legal Representative

Date

If Signed by Legal Representative, Relationship to Patient

Signature of Witness

PERRY, HICKS, CROTTY AND DESHAIES, LLP

ATTORNEYS AT LAW
388 COUNTY STREET
NEW BEDFORD, MASSACHUSETTS 02740-4992

DANIEL C. PERRY
THOMAS P. CROTTY
MARC R. DESHAIES

TELEPHONE
(508) 996-8291

TELECOPIER
(508) 997-2637

LEONARD E. PERRY
(1985-1999)

EDWARD D. HICKS
(1995-2000)

BLAIN S. BAILEY

ELLYN H. MURD

AMY S. MELLO*

*ALSO ADMITTED IN N.J.

E-MAIL: info@perryhicks.net
www.perryhicks.net

August 17, 2005

Sent By Fax - 1-312-382-8910

Leena Soni, Esquire
Cozen O'Connor
222 South Riverside Plaza - Suite 1500
Chicago, IL 60606-6000

Re: Patricia A. Latham
Vs: The Minnesota Life Insurance Company
No: 05-CV-10294-RWZ

Dear Attorney Soni:

Please articulate a rationale basis for me to assist you in something that Minnesota Mutual failed to do both prior to the approval of Mr. Latham's life insurance policy or within 30 months of the execution of the said application. I know of no legal reason to assist you in this matter. Additionally, we produced all of Dr. Henderson's medical records and those of Brigham & Women's Hospital and Lahey Clinic as per your request for production of documents.

Very truly yours,


MARC R. DESHAIES

MRD/sc

